

## REMARKS

In complete response to the outstanding Official Action of November 24, 2008, on the above-identified application, reconsideration is respectfully requested. Claims 13 – 23 and 25 - 27 remain in this application.

### Claim Rejections Under 35 U.S.C. § 102

Claims 13 – 23, 25, and 27 stand rejected under 35 U.S.C. § 102(a) or (b) as being anticipated by Allemand '453 (cited using its English equivalent US '054). Applicant respectfully submits that claims 13 – 23, 25, and 27 are not anticipated by Allemand '453. As discussed in the previous Office Action reply, this reference does not qualify as prior art given the priority claim of the present application.

The Examiner states, quoting from MPEP § 201.15, that "Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55."

The Applicants respectfully submit that all requirements of MPEP § 201.15 and 37 CFR 1.55 have been met by the submission of the present application. This application entered the national stage from an international application after compliance with 35 U.S.C. 371. As clearly evident on PAIR, the August 18, 2006 application submission of the present application included a "Certified Copy of Foreign Priority Application", and English language translations of the Specification, Claims and Abstract. There is clearly a Transmittal Letter identified as having the "English Language Translation of International Application PCT/FR 2005/050074" attached. The acceptance of this English language translation was acknowledged in the April 24, 2007 Notice of DO/EO Acceptance. This Notice of Acceptance also noted a valid priority date of February 25, 2004 for this international application. Hence, Applicants respectfully restate that the Allemand '453 reference fails to qualify as prior art given the priority claim of the present invention.

### Claim Rejections Under 35 U.S.C. § 103

Claim 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allemand '453. As discussed above, Allemand '453 fails to qualify as prior art, hence rendering this rejection moot.

Claims 13 – 23 and 25 – 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ducrocq (WO 03056044, cited using its English equivalent, PG-pub US 2005/0103159) in view of Meyers et al '122.

The Examiner notes that:

"The setpoints C1 and C2 are recognized as result-effective variables in term of aluminum melting, which is evidenced by Ducrocq '044. Ducrocq '044 teaches of the analysis of the CO and H<sub>2</sub> concentrations during melting in a furnace fitted with a burner operation in combustion mode with oxygen, which may be used as a basis for regulating an aluminum melting process.".

The Applicants respectfully point out that independent Claim 13 (as well as independent Claim 27) of the instant application does more than simply claim the use of setpoints to regulate an aluminum melting process. Claim 13 of the instant application demands, among other requirements,

- the initial regulation of either carbon monoxide or hydrogen concentration (or both) to a first setpoint (C1),
- then, during an oxidation limitation phase
  - either keeping the oxidizer constant and modulating the fuel flow,
  - or keeping the fuel flow constant and modulating the oxidizer flow,
- in order to decrease either the carbon monoxide and hydrogen concentration (or both) to a second, different, setpoint (C2).

The skilled artisan would find that (at least) *these elements are neither taught nor suggested by either Ducrocq '044 or Meyers et al '122, alone or in combination.* Accordingly, this rejection is moot as pertains to claims 13 and 27. As claims 14 – 23, 25, and 26 are dependent upon claim 13, the above argument pertains to them as well.

## CONCLUSION

In view of the current amendments, the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted,

/Elwood Haynes/

Elwood Haynes, Reg. No. 55,254

Date: January 14, 2009

Air Liquide  
2700 Post Oak Blvd., 18<sup>th</sup> Floor  
Houston, TX 77056  
Phone: 713-624-8952  
Fax: 713-624-8950